

of the public, which requires, under ch. 153, the services of a person licensed to practice optometry or medicine, does not involve mere "merchandising" of glasses, and in any event such advertising may be prohibited by statute where it tends to deceive and mislead the public. *Ritholz v. Johnson*, 246 W 442, 17 NW (2d) 590.

See notes to sec. 1, art. I, on exercises of police power and limitations imposed by the Fourteenth Amendment, citing *Ritholz v. Johnson*, 246 W 442, 17 NW (2d) 590.

153.10, Stats. 1957, must be read and interpreted in the light of the declared purpose in 153.12. Considered in such light, 153.10 specifically applies to opticians who are members of an optical firm and engaged in advertising relating to the price of lenses, frames, complete glasses, and advertising a one-price policy. Proof of fraud is not required in order to spell out an offense since the practice protected against is that of filling a prescription to meet the price rather than the needs of the patient. *Bedno v. Fast*, 6 W (2d) 471, 95 NW (2d) 396.

See note to sec. 1, art. I, on exercises of police power, citing *Bedno v. Fast*, 6 W (2d) 471, 95 NW (2d) 396.

A rule promulgated by the board of examiners in optometry, so far as declaring that certain advertising practices constitute unprofessional conduct, is beyond the authority of the board, in view of 153.10, Stats. 1955, relating to prohibited advertising, but not enumerating any type of advertising covered by provisions of the rule of the board; hence an order of the board suspending the license of an optometrist to practice, because of violating such rule, is void. *Stone v. Harris*, 6 W (2d) 634, 95 NW (2d) 764.

153.10, Stats. 1953, prohibiting price advertising of eyeglasses, appears not to be applicable to the Wisconsin distributor of an out-of-state newspaper which carries the price advertising of a concern located in another state where such price advertising is permitted. 44 Atty. Gen. 23.

153.10, Stats. 1959, applies to newspapers which print advertisements and it is immaterial that the optometrist who places the ad conducts his business in a state which does not prohibit price advertising of eyeglasses. 48 Atty. Gen. 223.

449.11 History: 1943 c. 273; Stats. 1943 s. 153.11; 1969 c. 336 s. 134; Stats. 1969 s. 449.11.

449.12 History: 1943 c. 273; Stats. 1943 s. 153.12; 1951 c. 261 s. 10; 1969 c. 336 s. 134; Stats. 1969 s. 449.12.

449.13 History: 1967 c. 73; Stats. 1967 s. 153.14; 1969 c. 336 s. 134; Stats. 1969 s. 449.13.

449.15 History: 1967 c. 73; Stats. 1967 s. 153.15; 1969 c. 336 s. 135; Stats. 1969 s. 449.15.

CHAPTER 450.

Pharmacy Examining Board.

450.01 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.01; 1927 c. 448 s. 1a; 1939 c. 448; 1951 c. 319 s. 246; 1953 c. 173; 1965 c. 351; 1967 c. 297;

1969 c. 336 ss. 93, 94, 170, 175 (9); Stats. 1969 s. 450.01.

450.02 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.02; 1927 c. 448 ss. 1, 2; 1929 c. 258; 1931 c. 396; 1935 c. 233; 1939 c. 448; 1939 c. 517 s. 9a; 1943 c. 77; 1943 c. 375 s. 58; 1945 c. 292; 1951 c. 62, 122, 727; 1953 c. 172, 173; 1955 c. 115; 1957 c. 81, 701; 1959 c. 545; 1961 c. 603, 612, 638; 1963 c. 441; 1965 c. 351; 1967 c. 277; 1969 c. 191, 286; 1969 c. 336 ss. 98, 175 (5); 1969 c. 392 s. 69x; Stats. 1969 s. 450.02.

"Drug sundries" as a store sign is of similar meaning to "drug store," and its use by stores that are not regular pharmacies is prohibited by 151.02 (8), Stats. 1931. 20 Atty. Gen. 778.

One convicted of a felony may be allowed to take the pharmacist's examination, if qualified to do so. 25 Atty. Gen. 708.

Where a second notice of expiration of a pharmacist's registration under 151.02 (3), Stats. 1935, is sent by registered mail with return receipt requested and notice is returned marked "unclaimed," such notice is ineffective to terminate the right to be a registered pharmacist. 26 Atty. Gen. 48.

A person who passes an examination given by the state board of pharmacy may become a legally registered pharmacist even though one member of the board is not a registered pharmacist as required by 151.01 (1), Stats. 1935. 26 Atty. Gen. 97.

Except for short absences which may be reasonably necessary in the case of a registered pharmacist in charge, an establishment using the title "pharmacy," "drug store," "pharmacist" or "apothecary" may not, in view of the provisions of 151.02 (9), Stats. 1939, be kept open in the absence of the registered pharmacist, even for the serving of meals and the sale of other commodities and regardless of the fact that drugs are kept in a separate room and locked when the pharmacist is not present. 28 Atty. Gen. 395.

Pharmaceutical training obtained in a licensed retail pharmacy or drug store operated by a hospital under the direction and supervision of a registered pharmacist must be accepted by the state board of pharmacy as a part of the training course required of applicants for registration as pharmacists. 40 Atty. Gen. 244.

Drug store permits under 151.02 (9), Stats. 1951, are to be issued to applicants whose premises and equipment qualify under the provisions of 151.02 (10), if the drug business is at all times under the separate management of a registered pharmacist. The ownership of the store is immaterial, as is the fact that other lines of business are conducted in connection therewith by nonpharmacists. 40 Atty. Gen. 290.

Under 151.02 (9), Stats. 1955, when a druggist moves his drug store from one location to another the new store must be inspected and registered and the proper fees paid therefor regardless of the distance from the old location to the new location and regardless of the fact that the druggist has just renewed his annual registration of the old store. 44 Atty. Gen. 179.

A licensed pharmacist who operates a drug store in leased premises, located in a factory, should apply for drug store registration and a

permit under 151.02 (9), Stats. 1955. If the owner of the property proposes to hire the pharmacist and control the operations he should apply for the permit. The fact that the factory owner proposes to furnish the drugs free of charge to employes is not grounds for denying a drug store permit. 44 Atty. Gen. 214.

A person desiring to engage in training for registration as a pharmacist must first register as an apprentice with the state board of pharmacy. Apprentice training must be supervised by a pharmacist registered by the board. 45 Atty. Gen. 108.

450.03 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.03; 1953 c. 173; 1961 c. 229; 1969 c. 336 s. 99; Stats. 1969 s. 450.03.

Items defined as drugs under 151.06 (1), (2) and (3), Stats. 1947, and intended for animal use cannot be sold by merchants generally and may be sold only by persons authorized to do so under 151.03 and 151.04. 37 Atty. Gen. 410.

21 Atty. Gen. 25, to the effect that a rural permit to sell drugs and medicines may not be issued to a person who is a resident of an incorporated city or village, is withdrawn. 39 Atty. Gen. 283.

450.04 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.04; 1939 c. 46, 448; 1951 c. 516; 1953 c. 172; 1955 c. 115; 1957 c. 68; 1961 c. 612; 1969 c. 336 ss. 100, 175 (5); Stats. 1969 s. 450.04.

"The circumstances of a pharmacist's or druggist's calling demand the exercise of a high degree of care and skill, such care and skill as an ordinarily prudent person would exercise under those circumstances, the highest degree of care and prudence consistent with the reasonable conduct of the business. The effect of a mistake may be swift and disastrous. There are many cases in which druggists have been held liable for injuries resulting from negligence in filling a prescription or supplying a remedy." *Hoar v. Rasmusen*, 229 W 509, 514, 282 NW 652, 654.

The purpose of 151.04 (2), Stats. 1943, is to prevent any but registered pharmacists, or assistant registered pharmacists under the personal supervision of registered pharmacists, from selling or compounding drugs; and a registered pharmacist, having charge of a drugstore in a municipality of the size covered by the statute, and permitting a clerk who is neither a registered pharmacist nor a registered assistant pharmacist to sell drugs, violates the statute. *State v. Maas*, 246 W 159, 16 NW (2d) 406.

Aspirin, milk of magnesia, and camphorated oil are not "proprietary medicines" within the meaning of 151.04 (3), Stats. 1949, excepting the sale of proprietary medicines from the provisions in 151.04 (2) prohibiting the sale of drugs by persons other than registered pharmacists or assistants. *State v. Wakeen*, 263 W 401, 57 NW (2d) 364.

Drugs such as tincture of iodine, sweet spirits of nitre, and like preparations, which may be prepared by anyone, are not proprietary medicines within the meaning of 151.04 (3), Stats. 1923, and cannot be sold except under the personal supervision of a registered pharmacist. 14 Atty. Gen. 18.

Aspirin can be sold in drug stores only under statutes regulating druggists and sale of drugs. 16 Atty. Gen. 140, 318.

A practicing physician is not authorized to run a drug store without complying with the pharmacy law. 3 Atty. Gen. 555; 16 Atty. Gen. 722.

It is unlawful to sell drugs and medicines including United States Pharmacopoeia and National Formulary preparations except proprietary medicine and medicines specifically exempted in 151.04 (3), Stats. 1927, except by registered pharmacists or assistant registered pharmacists and those having merchants' permits under 151.03. 16 Atty. Gen. 780.

151.04 (2), Stats. 1931, does not prohibit stores from doing their own packaging and labeling of paris green from bulk supply. 20 Atty. Gen. 777.

Formaldehyde may not be sold by a general merchant in a rural district without a permit under 151.03, Stats. 1935. 24 Atty. Gen. 415.

Compounds bearing names similar to aspirin and containing similar ingredients may be sold only under 151.04 (2), Stats. 1937. 28 Atty. Gen. 90.

See note to 95.64, citing 40 Atty. Gen. 341.

Dispensing of drugs by a physician to a patient in the course of professional treatment is exempt from the provisions of ch. 151, Stats. 1951, and no violation of 151.04 (2) or 151.07 (3) is involved where the particular prescription is delivered to the patient by the office girl who has been directed by the physician to select certain tablets from a designated container and package the same under the general supervision of the physician. 41 Atty. Gen. 23.

450.05 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.05; 1939 c. 448; 1943 c. 77; 1955 c. 10; 1969 c. 336 ss. 101, 175 (5); Stats. 1969 s. 450.05.

The owner of a grain and feed store selling arsenic and the clerk making the sale are liable for violation of the pharmacy law. 20 Atty. Gen. 775.

450.06 History: 1939 c. 448; Stats. 1939 s. 151.06; 1969 c. 336 s. 102; Stats. 1969 s. 450.06.

See note to sec. 1, art. IV, on delegation of power, citing *State v. Wakeen*, 263 W 401, 57 NW (2d) 364.

An oatmeal cookie containing methyl-cellulose is probably not a drug within the meaning of 151.06. 50 Atty. Gen. 200.

450.08 History: 1935 c. 306; Stats. 1935 s. 146.20; 1951 c. 516 s. 5; 1955 c. 10 s. 118; Stats. 1955 s. 151.10; 1959 c. 545; 1961 c. 612; 1969 c. 336 s. 104; 1969 c. 384 s. 3; Stats. 1969 s. 450.08.

450.09 History: 1935 c. 306; Stats. 1935 s. 146.21; 1955 c. 10 s. 118; Stats. 1955 s. 151.11; 1969 c. 336 s. 104; Stats. 1969 s. 450.09.

450.10 History: 1935 c. 306; Stats. 1935 s. 146.22; 1943 c. 400; 1953 c. 200; 1955 c. 10 s. 118; Stats. 1955 s. 151.12; 1969 c. 336 s. 105; Stats. 1969 s. 450.10.

450.11 History: 1933 c. 420; Stats. 1933 s. 351.235; 1941 c. 161; 1955 c. 696 s. 291; Stats. 1955 s. 151.15; 1969 c. 336 s. 106; Stats. 1969 s. 450.11.

See notes to sec. 1, art. I, on exercises of police power, citing *State v. Arnold*, 217 W 340, 258 NW 843.

450.12 History: 1963 c. 314; Stats. 1963 s. 151.16; 1969 c. 336 s. 107; Stats. 1969 s. 450.12.

450.13 History: 1963 c. 314; Stats. 1963 s. 151.17; 1969 c. 336 s. 108; Stats. 1969 s. 450.13.

450.18 History: 1969 c. 252 s. 5; 1969 c. 392 ss. 57g, 84g; Stats. 1969 s. 450.18.

CHAPTER 451.

Pharmacy Internship Board.

451.01 History: 1965 c. 351; Stats. 1965 s. 151.015 (2); 1969 c. 336 s. 96; Stats. 1969 s. 451.01.

451.02 History: 1965 c. 351; Stats. 1965 s. 151.015 (3); 1969 c. 336 s. 96; Stats. 1969 s. 451.02.

CHAPTER 452.

Real Estate Examining Board.

Revisor's Note, 1955: The statutes on licensing real estate brokers (136.01 to 136.18) and those on licensing business opportunity brokers (136.19 to 136.36) are almost identical. This bill eliminates the duplication by consolidating the sections on business opportunity brokers with the parallel sections on real estate brokers. Variances between the 2 parts are preserved and there is no change in substance except in a few very minor ways which are explained in the notes. Absence of a note to any section of the bill means that no change in the law is intended. This revision has been approved by the real estate brokers' board. [Bill 51-S]

Editor's Note: Ch. 231, Laws 1929, created secs. 136.01-136.16, Stats. 1929, and repealed the pre-existing sec. 136.01, which was based on ch. 656, Laws 1919, and amendatory statutes. The sections comprising ch. 136, Stats. 1967, were renumbered by ch. 336, Laws 1969.

452.01 History: 1929 c. 231; Stats. 1929 s. 136.01; 1933 c. 184 s. 2; 1947 c. 411 s. 6; 1947 c. 522; 1947 c. 612 s. 1; Stats. 1947 ss. 136.01, 136.19; 1955 c. 7, 359; Stats. 1955 s. 136.01; 1963 c. 14, 366; 1965 c. 123; 1969 c. 56, 212; 1969 c. 336 s. 47; Stats. 1969 s. 452.01.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing *Goldsmith v. Walker Mfg. Co., Inc.* 295 F Supp. 1037.

136.01 (2) (b), Stats. 1935, makes immaterial the question of ownership; the test is whether or not the person "is engaged wholly or in part in the business of selling real estate." 25 Atty. Gen. 741.

A company which is not excluded and which is formed for the purpose of loaning its own money, to be secured by mortgage, is a real estate broker under 136.01, Stats. 1939. 29 Atty. Gen. 105.

Persons who purchase unimproved lots and sell the same to the public after making improvements thereon come within the definition of "real estate broker" contained in 136.01 (2) (b), Stats. 1943. 33 Atty. Gen. 1.

452.02 History: 1957 c. 159; Stats. 1957 s. 136.011; 1961 c. 593, 675; 1965 c. 123; 1969 c. 336 ss. 48, 175 (6); Stats. 1969 s. 452.02.

A person selling the right to entomb a human body forever in a fixed burial space designated as a garden crypt, mausoleum crypt, or sarcophagus for a commercial cemetery is selling "grave spaces" and must be licensed under 136.011, Stats. 1957. 47 Atty. Gen. 253.

452.03 History: 1929 c. 231; Stats. 1929 s. 136.02; 1947 c. 522; Stats. 1947 ss. 136.02, 136.20; 1955 c. 7; Stats. 1955 s. 136.02; 1957 c. 159; 1961 c. 593; 1963 c. 366; 1965 c. 123; 1969 c. 336 ss. 48, 175 (6); Stats. 1969 s. 452.03.

A contract by 2 real estate brokers, one licensed and one not licensed, for the sale of a store business and the real estate used therewith to a third party, cannot be the basis for a recovery of fees by either or by both; the contract being void as to one is void as to both. *Payne v. Volkman*, 183 W 412, 198 NW 438.

The sale of a public utility being considered as a sale of personal property, a broker who was employed to sell the utility did not come under the provisions of 136.01, Stats. 1923. *Ireland v. Tomahawk L. T. & I. Co.* 185 W 148, 200 NW 642.

One hired to put on a sales campaign to sell cemetery lots, whose duty was to arrange for advertising and hire salesmen to sell the lots at fixed prices, was not required to have a real estate broker's license, and the fact that the gross sales were made the basis for determining the amount of the compensation does not alter the legal relation of the parties. *Howard v. Heinig*, 191 W 166, 210 NW 414.

One who is not licensed as a real estate broker in this state is not authorized to negotiate a lease for another as broker, and he cannot recover the agreed commission. *Nick-oil v. Racine C. & S. Co.* 194 W 298, 216 NW 502.

To recover a broker's commission, a corporation engaged in the real estate business must have a real estate broker's license under 136.01, Stats. 1927, even though it had succeeded to the business of a licensed brokerage partnership which ceased when the corporation began business. *George F. Russell, Inc. v. Hickcox*, 197 W 622, 222 NW 807.

An agreement to pay a commission on a loan from a foreign corporation secured by a real estate mortgage, which loan is negotiated by a nonresident loan agent through a resident insurance agent, neither of whom is licensed in Wisconsin, is invalid and precludes a recovery of the commission. *Livingston v. Linker R. Co.* 202 W 232, 231 NW 626.

Under the provisions of 136.01 (2) (c) and (5), Stats. 1927, one entering into a contract in this state to procure a loan for another, to be secured by a real-estate mortgage, for a commission, is holding himself out as a broker or salesman, and cannot recover the commission unless he has a real estate broker's or real estate salesman's license. *Livingston v. Linker R. Co.* 202 W 232, 231 NW 626.

The licensing board was justified in denying a real estate broker's license to an applicant who was unable to read and write the English language although he operated only in selling real estate owned and platted by himself, since a "real estate broker" is anyone who is